

DRAFT REGULATION—REV A

Appointing Authority Letter Reference: CS-xxDRAFT	Effective Date: March 18, 2001	Index Reference: ERB Appeal Procedures	Regulation Number: 8.05
Issuing Bureau: Executive	Rule Reference: Rule 1-15 (Employment Relations Board)		Replaces: Regulation 2.05 (CS-6454, January 13, 1984)
Subject: EMPLOYMENT RELATIONS BOARD: APPEAL PROCEDURES			

ERB Reg_Rev A_RED.doc , Printed: 02/15/01 8:39 AM

Index

1. PURPOSE.....	2
2. RULE REFERENCES.....	2
3. DEFINITIONS.....	3
4. STANDARDS AND PROCEDURES.....	6
A. Appellate Jurisdiction of Employment Relations Board.....	6
B. General Procedure	7
C. Appeal as of Right.....	9
D. Application for Leave to Appeal	11
E. Summary Dismissal of Claim of Appeal or Application for Leave to Appeal.....	13
F. Consideration of Application for Leave to Appeal.....	14
G. Board Procedure after Grant of Leave to Appeal.....	14
H. Extensions of Time.....	16
I. Effect of Filing Claim or Application.....	17
J. Special Procedures	19
K. Relief.....	21
L. Record.....	21
M. Supplementing the Record and New Evidence.....	23
N. Dismissal of Appeals	24
O. Oral Argument	25
P. Recommendations	26
Q. Post-Decision Procedures	28
5. CONTACT	29
CURRENT REG. 2.05: ERB APPEAL PROCEDURES.....	30

1. PURPOSE

This regulation establishes standards and procedures to be used when appealing a decision to the Civil Service Commission through the Employment Relations Board.

2. RULE REFERENCES

Rule 1-15: Employment Relations Board

1-15.1 Employment Relations Board.

The civil service commission shall appoint an employment relations board consisting of three unclassified members who shall be compensated on a per diem basis, as determined by the commission. The commission shall designate one of the members as the chair of the board.

1-15.2 Term of Office.

The members shall be appointed to staggered terms of three years each and shall serve at the pleasure of the civil service commission. A person appointed to fill a vacancy on the board shall be appointed only for the unexpired term. All terms of office shall expire May 1 in the year of expiration. A member may be reappointed.

1-15.3 Quorum and Action.

Two members of the board shall constitute a quorum. The board shall act by a vote of a majority of a quorum. If a quorum consists of only two members and they cannot agree, the board shall not act but shall forward the matter to the civil service commission with the separate recommendation of each member.

1-15.4 Duties.

The employment relations board shall have the following duties:

- (a) Review all appeals of right to the civil service commission and recommend final action to the commission.*
- (b) Review all applications for leave to appeal to the civil service commission and recommend the grant or denial of leave to appeal. If the board recommends granting the application, the board shall not refer that recommendation to the commission until after the*

board has considered the appeal on its merits and has issued a final recommendation on the merits of the appeal.

(c) Serve as the members of any impasse panel or coordinated compensation panel. However, the board instead may appoint one of its own members or one or more other persons to serve as the panel.

(d) Review all other matters referred to it by the civil service commission or the state personnel director.

(e) Recommend to the state personnel director regulations governing board procedures.

1-15.5 Final Action by the Commission.

The employment relations board shall file its final recommendations with the civil service commission. After reviewing the board's recommendations, the commission shall issue a final decision in the matter. The commission may approve, reject, or modify, in whole or in part, the board's recommendations. If the commission rejects, in whole or in part, the board's recommendations, the commission may (1) remand the matter to the board or other officer for further action, (2) issue a final judgment or decision that rejects or modifies the recommendation of the board, or (3) exercise any other power of the board or commission.

3. DEFINITIONS

A. Definitions in the Civil Service Commission Rules

1. **Adjudicating officer** means the state personnel director or other civil service administrative officer, technical review officer, hearing officer, arbitrator, or other officer authorized to make a decision reviewable by the civil service commission.

2. **Administrative officer** means the state personnel director or a person authorized by the state personnel director to take administrative action on matters filed with the department of civil service or the civil service commission.

3. **Board** means the employment relations board.

4. **Commission** means the Michigan civil service commission.

DRAFT	Reg 8.05: Employment Relations Board: Appeal Procedures DRAFT (Rev A)	Page 4 of 40
-------	--	--------------

5. **Good cause** means an acceptable excuse for failing to file or take other required action timely. Good cause does not include a person's own carelessness, negligence, or inattention to the filing or other requirements.
6. **Hearing officer** means a person authorized by the state personnel director to administer oaths and conduct hearings as provided in the civil service rules and regulations.
7. **Special extenuating circumstances** means a compelling excuse for the failure to file a matter timely that arises out of one of the following:
 - (a) An intentionally or fraudulently misleading action by an appointing authority or party that prevented the filing.
 - (b) Serious physical or mental incapacity of the person that prevented the filing.
 - (c) Extraordinary unforeseen circumstances outside the control of the person that prevented the filing.
8. **Technical complaint** means a written complaint that a technical decision (1) violated article 11, section 5, of the Michigan constitution, (2) violated a civil service rule or regulation, or (3) was arbitrary and capricious.
9. **Technical decision** includes each of the following individual decisions:
 - (a) **Technical classification decision** means a civil service staff decision classifying a position in the classified service.
 - (b) **Technical qualification decision** means a civil service staff decision determining the qualifications and fitness of a candidate for a position in the classified service.
 - (c) **Technical disbursement decision** means a civil service staff decision approving or disapproving disbursements for personal services.
 - (d) **Technical appointment decision** means (1) a decision of an appointing authority appointing a candidate to a position in the classified service or (2) a decision of civil service staff certifying or revoking an appointment to a position in the classified service.

B. Additional Definitions Used in This Regulation

- (1) **Authorized representative** means a person authorized by a party in a proceeding before the Employment Relations Board or Civil Service Commission to appear on behalf of and to represent the interests of the party in that proceeding.
- (2) **Dismissal for just cause** means a permanent termination of the employment relationship of an employee with status by an appointing authority for just cause. *Dismissal for just cause* does not include, for example, any of the following:
- (a) A termination of a probationary employee.
 - (b) A layoff.
 - (c) A separation from the classified service at the end of a leave of absence.
 - (d) A revocation of an appointment authorized in Rule 3-6.
 - (e) The separation of an employee in a limited-term appointment at or before the end of the term of appointment due to lack of work or funding.
 - (f) The separation of a member of the senior executive service (SES) or the senior executive management assistant service (SEMAS) at the expiration of the employee's appointment if the employee did not have status at the time of appointment to the SES or SEMAS.
- (3) **Evidentiary hearing** means a contested quasi-judicial proceeding before a hearing officer in which the parties, after notice, may introduce documentary evidence, examine and cross examine witnesses under oath, and submit arguments.
- (4) **Proof of service** means a written statement filed with the Employment Relations Board certifying the date and method by which a party has served a copy of a document on another party.

4. STANDARDS AND PROCEDURES

A. Appellate Jurisdiction of Employment Relations Board

The Employment Relations Board exercises appellate jurisdiction over the following matters on behalf of the Civil Service Commission:

- (1) **Grievance Appeals.** Claims of appeal and applications for leave to appeal regarding final decisions of adjudicating officers, as authorized in Rule 8-2.5.
- (2) **Technical Review Decisions.** Applications for leave to appeal regarding final technical review decisions, as authorized in Rule 8-3.4.
- (3) **Labor Relations Appeals.** Applications for leave to appeal regarding a labor relations decision of the State Personnel Director or other Civil Service staff, including the following:
 - (a) A decision concerning prohibited subjects of bargaining, as authorized in Rule 6-3.5.
 - (b) A decision concerning recognition and unit determinations, as authorized in Rule 6-6.1.
 - (c) A decision dismissing a petition for a unit election, as authorized in Rule 6-6.2(b).
 - (d) A decision regarding an excluded position determination, as authorized in Rule 6-6.4.
 - (e) A decision regarding an unfair labor practice claim, as authorized in Rule 6-14.3.
 - (f) Any other final labor relations decision, as authorized in Rule 6-14.3.
 - (g) A decision to impose a fine on an employee for engaging in a strike, as authorized in Rule 6-15.4(c).

(h) A decision to impose a fine on a labor organization for promoting, encouraging, or supporting a strike, as authorized in Rule 6-15.5(c).

(4) **Other Administrative Decisions.** Applications for leave to appeal other administrative decisions of the State Personnel Director or an adjudicating officer when authorized by the civil service rules or regulations, including a decision on a complaint regarding disbursements for personal services, as authorized in Rule 7-9.

B. General Procedure

(1) **Filing appeal.** Every appeal to the Civil Service Commission must be initiated by filing (1) a claim of appeal as of right or (2) an application for leave to appeal, whichever is authorized.

(2) **Location to file.** All appeals must be filed with the Employment Relations Board, 2nd Floor, Department of Civil Service, Capitol Commons Center, 400 South Pine Street, P.O. Box 30002, Lansing, Michigan 48909.

(3) Perfecting appeal

(a) An appeal to the Civil Service Commission is filed when the Board receives the claim of appeal or application for leave to appeal. An appeal may be filed by personal delivery or mail.

(b) An appeal may be filed by telephone facsimile to meet the filing time requirements. However, if an appeal is received by telephone facsimile, the original signed documents and 6 copies must be received by the Board within 7 calendar days after the facsimile filing. If the original signed documents and 6 copies are not received within 7 calendar days, the initial facsimile filing is deemed untimely.

(4) **Number of copies.** Whenever a party files any pleading or document with the Board, the party must file one signed original and 6 complete copies of each pleading or document. The party must also serve 1 complete copy on all other parties. In a group grievance, a party serving the group is only required to serve only 1 complete copy on the authorized representative or spokesperson for the group.

1 **(5) Changing authorized representative.** If a party changes its
2 authorized representative during the Board proceedings, the party or
3 the new representative must notify the Board in writing of the name,
4 business address, telephone number, facsimile number, and e-mail
5 address of the new authorized representative. The party or new
6 representative must serve a copy of the notice on all other parties
7 and file a proof of service with the Board.

8
9 **(6) Dismissal of appeal.** An appeal may be dismissed by the Board or
10 the Board's administrative officer for failure to perform properly and
11 timely any act required by the civil service rules or regulations.

12
13 **(7) Proof of service**

14
15 **(a) Service and proof of service required.** If a party files any
16 pleading or document with the Board, that party must (1) serve
17 a copy of the pleading or document on all other parties and
18 (2) file a proof of service with the Board at the time the original
19 pleading or document is filed with the Board.

20
21 **(b) Form of proof of service.** A party may file a proof of service
22 on civil service Form CS-1740, "Notice of Filing and Proof of
23 Service to Other Parties." If a party does not use Form
24 CS-1740, the proof of service must contain substantially all of
25 the information required in Form CS-1740. A copy of Form
26 CS-1740 is available from the Board and on the civil service
27 web site.

28
29 **(c) Defective proof of service**

30
31 **(1)** The Board will not accept as proof of service a cover letter
32 or filing that indicates that other parties involved in
33 proceedings before the Board had been copied the
34 enclosed materials. The Board will not accept a general
35 statement in a cover letter or filing such as "other parties of
36 record have been served."

37
38 **(2)** Any party notified that it has failed to provide proper proof
39 of service upon other parties of any document filed with the
40 Board is allowed no more than 7 calendar days from the
41 mailing date of the Board's notice to serve the other party,
42 and to file appropriate proof of service with the Board.
43

(8) Technical Appeals

- (a) **Department of Civil Service as participant.** In an appeal of a technical decision, the Department of Civil Service participates in the Board proceedings as a party.
- (b) **Service on technical appeal officer.** The technical review officer who issued the decision being appealed is the authorized representative of the Department of Civil Service. An appellant must serve the technical review officer with a copy of the application for leave to appeal and all other documents.
- (c) **Board review.** The Board reviews the technical decision *de novo* and may recommend to the Commission any action authorized by law.

C. Appeal as of Right

(1) Grounds. The following may file an appeal as of right:

- (a) An employee with status aggrieved by a final decision of an adjudicating officer upholding the employee's dismissal for just cause.
- (b) An appointing authority aggrieved by a final decision of an adjudicating officer reinstating an employee dismissed for just cause by the appointing authority.

(2) Procedure for filing claim of appeal. The following steps must be followed in an appeal as of right:

- (a) **Filing deadline.** The party filing the appeal (the appellant) must submit to the Board an original and 6 copies of the claim of appeal within 28 calendar days after the date the final decision of the adjudicating officer is issued.
- (b) **Contents of claim of appeal.** The claim of appeal must clearly identify the decision that is being appealed (including the name of the case, the decision number, and the Civil Service case reference number). The claim must also include a brief statement of grounds for appeal.

(c) Signature and identification.

- (1)** The claim of appeal must contain (1) the appellant's name, (2) employee identification number, (3) employing department or agency, (4) mailing address, (5) telephone number, and (6) e-mail address.
- (2)** If the appellant has an authorized representative, the claim of appeal must contain (1) the representative's name, (2) organization, (3) business mailing address, (4) business telephone number, (5) facsimile number, and (6) e-mail address.
- (3)** The appellant or the appellant's authorized representative must sign the claim of appeal.

- (d) Service and proof of service.** The appellant must serve a copy of the claim of appeal on all other parties and submit a proof of service to the Board with the claim of appeal.

(3) Record

- (a) Generally.** If a Civil Service hearing officer issued the decision on appeal, the Board will obtain the record for the case and make the record available to the parties for inspection and copying.
- (b) In arbitration cases.** If an arbitrator issued the decision on appeal as authorized in Rule 8-2.4(b)(2), the appellant must submit a copy of the arbitration decision with the claim of appeal. The appellant must certify at the time the claim of appeal is filed that the appellant has ordered a copy of the transcript of the arbitration proceedings and that the arbitrator has been requested to forward the entire record of the arbitration, including the original exhibits and briefs, to the Board.

- (4) Briefing schedule.** After the Board receives the record, the Board will notify the parties of the schedule for briefs and oral arguments.

- (a) Appellant's appeal brief.** The appellant must submit to the Board an original and 6 copies of an appeal brief in support of the claim of appeal within 28 calendar days after the Board issues its notice, or at such other time as the Board or the

Board's administrative officer orders. The appellant must also serve a copy of the brief on all other parties and submit a proof of service to the Board with the brief.

(b) **Brief of responding parties.** An appellee or other responding party may submit a response brief to the Board within 28 calendar days after the date of service of appellant's brief, or at such other time as the Board or the Board's administrative officer orders. The responding party must serve a copy of the brief on all other parties and submit a proof of service to the Board with the response brief.

(c) **Expedited process.** On request of any party, the Board or the Board's administrative officer may expedite the appeal process by shortening the time for filing a brief or response brief, calling for immediate appearance for oral argument, or otherwise accelerating the process.

D. Application for Leave to Appeal

(1) **Application for leave authorized.** If an appeal as of right is not authorized, a party aggrieved by a final decision of an adjudicating officer may appeal to the Board upon application and leave granted, as authorized in the civil service rules and regulations.

(2) **Procedure for filing application for leave to appeal.** The following steps must be followed in filing an application for leave to appeal:

(a) **Filing deadline.** The party filing the application for leave to appeal (the "appellant") must submit to the Board an original and 6 copies of the application and any affidavits within 28 calendar days after the date the final decision of the adjudicating officer is issued.

(b) **Contents of application.** The appellant must file an application for leave to appeal containing substantially all of the information required in civil service form CS-1743, "Application for Leave to Appeal to the Employment Relations Board." Form CS-1743 is available from the Board and on the civil service Web site. At a minimum, the application for leave to appeal must contain all of the following:

DRAFT	Reg 8.05: Employment Relations Board: Appeal Procedures DRAFT (Rev A)	Page 12 of 40
-------	---	---------------

- (1) **Decision appealed.** The identity of decision that is being appealed, including the name of the case, the decision number, and the civil service case reference number.
- (2) **Concise statement of material proceedings.** A concise statement of the material proceedings and findings.
- (3) **Grounds for appeal.** A sufficient explanation that establishes one or more of the following grounds for appeal:
 - (A) The decision of the adjudicating officer is erroneous.
 - (B) The decision violates article 11, section 5 of the Michigan constitution or is otherwise contrary to law, including the Civil Service Rules and Regulations.
 - (C) The question presented is of major significance to the classified service.
- (4) **Signature and identification**
 - (A) The application for leave to appeal must contain (1) the appellant's name, (2) employee identification number, (3) employing department or agency, (4) mailing address, (5) telephone number, and e-mail address.
 - (B) If the appellant has an authorized representative, the application must also contain (1) the representative's name, (2) organization, (3) business mailing address, (4) business telephone number, (5) facsimile number, and (6) e-mail address.
- (5) The appellant or the appellant's authorized representative must sign the original copy of the application for leave to appeal.
- (c) **Service and proof of service.** The appellant must serve a copy of the application for leave to appeal on all other parties and submit a proof of service to the Board with the application. In an appeal of a technical decision, a copy of the application for leave to appeal must be served on the technical review officer who issued the technical decision.

- 1
2
3
4
5
6
7
8
9
- (3) **Response to application for leave.** Any other party to the proceeding below may file a written response to the application for leave to appeal. The responding party must file an original and 6 copies of a response brief and any affidavits within 28 calendar days after service of appellant's application for leave to appeal. The responding party must serve a copy of the response on all other parties and must submit proof of service to the Board.

10
11
12
13

E. Summary Dismissal of Claim of Appeal or Application for Leave to Appeal

- 14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
- (1) **Summary Dismissal Authorized.** As authorized in Rule 8-7.4, before the Board considers a claim or application, the Board's administrative officer may recommend to the Commission that the claim or application be summarily dismissed for any of the following reasons:
- (a) **Not authorized.** The appellant is not authorized to file the appeal.
 - (b) **Lack of jurisdiction.** The Department of Civil Service or the Civil Service Commission lacks jurisdiction over a necessary party or over the subject matter of the appeal.
 - (c) **Untimeliness.** The claim of appeal or application for leave to appeal is untimely.
 - (d) **Another action pending.** Another civil service action has been initiated between the same parties involving substantially the same matter.
 - (e) **Barred by prior claim.** Substantially the same matter was adjudicated to finality in another action between the same parties.
- (2) **Final Action by Commission.** A recommendation for summary dismissal by the Board's administrative officer is transmitted directly to the Commission for review and final action.

F. Consideration of Application for Leave to Appeal

If the Board's administrative officer does not recommend summary dismissal of the application for leave to appeal, the Board shall review the application and issue a recommendation to the Commission.

(1) Denial of Application. If the Board recommends denying the application for leave to appeal, the Board shall issue the recommendation to the Civil Service Commission for final action.

(2) Grant of Application. If the Board recommends granting the application for leave to appeal, it shall issue its recommendation in the form of a decision granting leave. If the Board, in its discretion, determines that oral argument may be helpful, the Board shall schedule oral arguments.

G. Board Procedure after Grant of Leave to Appeal

If the Board issues a decision granting an application for leave to appeal, the following procedures apply:

(1) Record

(a) Generally. Unless the parties have stipulated to a record, the Board will obtain the record for the case from the applicable Civil Service division and make the record available to the parties for inspection and copying.

(b) Record in arbitration cases. Within 14 calendar days after the Board has granted leave to appeal an arbitrator's decision, the appellant must certify that the appellant has ordered a copy of the transcript of the arbitration proceedings and that the arbitrator has been requested to forward the entire record of the arbitration, including the original exhibits and briefs, to the Board.

(2) Briefing schedule. Upon receipt or settlement of the record, the Board will notify parties of the schedule for briefs and oral arguments, if any.

1 **(3) Appellant's appeal brief.** The appellant must submit an original and
2 6 copies of appellant's appeal brief within 21 calendar days after the
3 date of the Board's notice. The appellant must serve a copy of its
4 brief on all other parties and must submit a proof of service to the
5 Board with the initial brief.

6
7 **(4) Cross-appeals**

8
9 **(A)** If the Board grants one party's application for leave to appeal,
10 any other party may file a cross-appeal.

11
12 **(B)** To perfect a cross-appeal, a cross-appellant must file an original
13 and 6 copies each of a (1) concise statement of cross-appeal
14 and (2) a cross-appeal brief. The concise statement and cross-
15 appeal brief must be filed no later than the deadline for
16 appellant's appeal brief set in subsection (G)(3), above. The
17 cross-appellant must serve a copy of its concise statement and
18 brief on all other parties and must submit a proof of service to
19 the Board.

20 **(C)** A cross-appeal may be prosecuted even if the adverse party's
21 appeal is abandoned or dismissed.

22
23 **(5) Response briefs.** A party may file an original and 6 copies of a
24 response brief to an appeal or cross-appeal brief within 21 calendar
25 days after the date of the appellant's or cross-appellant's appeal
26 brief. A party filing a response brief must serve a copy of the
27 response brief on all other parties and must submit a proof of service
28 to the Board with the response brief.

29
30 **(6) Oral arguments.** If the Board schedules oral arguments, the parties
31 may appear and argue as provided in subsection O, below.

32
33 **(7) Remand.** The Board may, at any time, remand a case to the
34 adjudicating officer with directions for further action. Unless the
35 Board expressly retains jurisdiction, a case is remanded without
36 prejudice to the filing of a new application for leave to appeal by any
37 party from any further final decision of the adjudicating officer. An
38 order by the Board to remand a case is not appealable to the
39 Commission as a final recommendation of the Board.

H. Extensions of Time

(1) **Incomplete Filing.** If a party in good faith files a timely claim of appeal, application for leave, or cross-appeal that does not substantially comply with the civil service rules and regulations, the Board's administrative officer shall notify appellant of the requirements and allow additional time, not to exceed 7 calendar days, within which to comply.

(2) Extension for Filing

(a) **Stipulation.** The parties to an appeal may stipulate to an extension of time within which to file a claim, application, cross-claim, response brief, or other pleading. Any such stipulation must be in writing and received by the Board *before* the expiration of the original time limit. A stipulated extension cannot exceed 21 calendar days,

(b) **Request.** If the parties cannot stipulate to an extension of time, a party may request an extension in writing with the Board. Any request for an extension must be filed *before* the expiration of the required time for filing. The requesting party must serve a copy of the request on all other parties and submit a proof of service with the request. The Board's administrative officer may grant an extension of time within which to file a claim, application, cross-claim, response, or other pleading if the administrative officer finds that the party has a reasonable need for the extension and that no other party is materially prejudiced by the extension.

(c) Late Filing

(1) To request permission to file a late claim, application, cross claim, response, or other pleading after the time permitted in the civil service rules or regulations, a party may file a motion to permit late filing.

(2) The moving party must file an original and 6 copies of the motion and any supporting affidavits with the Board. The party must serve a copy of the motion and affidavits on all other parties and submit a proof of service to the Board with the motion.

- (3) Any other party may file an original and 6 copies of a response to the motion within 21 calendar days after service of the motion. A copy of the response must be served on all other parties and a proof of service must be submitted to the Board with the response.
- (4) The motion is evaluated under the standards set out in Regulation 8.06 [Computing Time and Filing Documents].
- (A) If the motion is filed 28 or fewer calendar days after the expiration of the time limit, the Board's administrative officer shall determine if good cause exists to permit a late filing.
- (B) If the motion is filed between 29 days and one year after the expiration of the time limit, the Board shall determine if special extenuating circumstances exist to permit a late filing.
- (C) A motion filed over one year after the expiration of the time limit cannot be accepted.

I. Effect of Filing Claim or Application

(1) After Final Decision of Adjudicating Officer

- (a) **Exclusive Jurisdiction.** Once an appeal or application for leave to appeal from a final order of an adjudicating officer is perfected, the Board exercises exclusive jurisdiction over the matter.
- (b) **Stay of Final Grievance Decision.** Under rule 8-2.6(a), a grievance decision of an adjudicating officer is final and binding on the parties 29 calendar days after the date the decision is issued, unless either (1) the decision provides for a later effective date or (2) a party files a further appeal to the Civil Service Commission within 28 calendar days after the date the decision is issued.
- (1) Unless all the parties agree otherwise, during the 28-day period following the issuance of the final decision of the adjudicating officer, the status of the parties and their

relationships in effect at the time of the decision remain unchanged.

- (2) If a party files a timely appeal and serves all other parties with a copy of the appeal within the 28-day period, the effective date of the decision is automatically stayed pending further order of the Board or Civil Service Commission.
- (3) If none of the parties intends to appeal a final decision of an adjudicating officer, the parties may implement the decision at any time.
- (4) If, within 28 calendar days after the date of the final decision of the adjudicating officer, none of the parties has filed a claim of appeal or an application for leave to appeal and served all the other parties, the decision is effective on the 29th day and the parties are required to promptly comply with its terms.
- (5) If a late claim or application is filed and accepted under subsection H(2)(c), the stay may be reinstated.

(c) Reinstatement or restoration of base pay. Under rule 8-2.6(b), if a final grievance decision of an adjudicating officer orders an appointing authority to reinstate a grievant who had been dismissed for cause, the appointing authority, as a condition of further appeal to the Civil Service Commission, shall temporarily either (1) reinstate the grievant or (2) restore the grievant's base pay and medical, dental, and vision group insurance. In such circumstance, the appointing authority must comply with the applicable provisions in Regulation 8.01 [Grievance and Grievance Appeal Procedures].

(d) Unit representation determination; stay. If the state employer or a labor organization files a timely application for leave to appeal a unit determination decision of the state personnel director, the director's decision is stayed pending further order of the Board or Commission.

(2) Before Final Decision of Adjudicating Officer

(a) Interlocutory Appeal. A party may file an application for interlocutory appeal of an interim ruling by an adjudicating

officer before a final disposition of the appeal. The application for interlocutory appeal must be filed within 14 calendar days after the date of the adjudicating officer's interim ruling or decision. The appellant must serve one original and 6 copies of the application with the Board. A copy of the application must be served on all other parties and proof of service must be submitted to the Board with the application.

(b) Application for interlocutory appeal. The application for interlocutory appeal must contain a concise statement of the material proceedings, allege grounds for appeal, and establish one of the following conditions:

(1) Hearing Officer Certification. The adjudicating officer has certified that the decision involves a controlling question of law, civil service rule, or procedure as to which there is substantial ground for difference of opinion, and that an immediate appeal will materially advance the ultimate resolution of the case.

(2) Irreparable Harm. If the interim relief requested by the appellant in the interlocutory appeal is not granted, the appellant will suffer irreparable harm by awaiting final decision in the case.

(c) Response. Any other party may file one original and 6 copies of a response to the application for interlocutory appeal within 14 calendar days after the date the application was filed. A party filing a response must serve a copy of the response on all other parties and submit a proof of service to the Board with the response.

(d) Stay of proceedings. The proceedings before the adjudicating officer are not stayed by the filing of the interlocutory appeal unless the appellant requests a stay and the adjudicating officer expressly orders a stay.

J. Special Procedures

(1) Expedited Procedure. The Board may shorten the time for filing a response, dispense with briefs, require simultaneous briefs, call for immediate appearance for oral argument, or otherwise expedite any

proceeding. If a matter is expedited, the Board shall set a time for response and notify the parties.

(2) **Emergency Appeal.** Upon the showing of due diligence and that irreparable harm will result if the normal practice on claim of appeal or leave to appeal is followed, and upon reasonable notice to all parties and opportunity for their response, the Board may grant a party's motion for emergency relief or for appearance before the Board at its next meeting. A party filing a motion for emergency relief must serve a copy of the motion on all other parties no later than the day the motion is filed and submit proof of service with the motion.

(3) **Motions.** All motions, other than those justifiably made at oral argument, must be made in writing to the Board, must briefly state the relief sought, and must be accompanied by a brief or affidavits setting forth the grounds for the action requested. The moving party shall serve a copy on all other parties and submit proof of service to the Board with the filing. All motions are decided upon the papers filed with the Board, unless the Board in its discretion calls for oral argument or otherwise indicates to the contrary.

(4) **Joinder.** Upon motion of a party, or upon the Board's own motion, parties may be added, dropped, or substituted at any stage of the proceedings, upon such terms as the Board deems appropriate.

(5) **Consolidation.** Upon motion of a party, or upon the Board's own motion, any number of proceedings before the Board may be consolidated when there are similar or interrelated facts and circumstances or common issues of law exist, provided no substantial right of any party is prejudiced by such consolidation.

(6) **Intervention.** Upon application that establishes sufficient reason, the Board may grant permission to a person, organization, employer, or the Department of Civil Service to intervene as a party or appear *amicus curiae* in proceedings before the Board.

Any application for intervention must be in writing and must set forth the facts upon which the claim for intervention is based. A copy must be served on all parties and a proof of service must be submitted to the Board with the application.

(7) Group appeals

- (a)** In a group appeal, the application for leave to appeal may be signed by an authorized representative on behalf of the group.
- (b)** At the time the application for leave is filed, the Board must be provided with a list of the name, mailing address, and telephone number of each person participating as a party in a group appeal.
- (c)** In a group appeal, all correspondence between the Board and the parties is with the authorized representative. If one or more parties does not have an authorized representative, or if there is more than one authorized representative, the Board shall issue appropriate orders for the conduct of the proceedings.

K. Relief

In any matter before it, the Board may recommend any relief within the Commission's authority under the Constitution and the Civil Service Rules and Regulations. This relief includes, but is not limited to, recommending that the Commission affirm, reverse, or modify in whole or in part any decision or order of an adjudicating officer or remand the matter for further proceedings.

L. Record

- (1) Record after evidentiary hearing.** In an appeal of a decision decided after an evidentiary hearing, the appeal is heard on the original papers and exhibits certified by the adjudicating officer and the transcript, if there was a recorded hearing. That part of the original record in the possession of the Department of Civil Service or an arbitrator must be transmitted promptly to the Board upon request. The Board or the parties may seek a stipulation of facts instead of providing a transcript. Where a substantial part of the transcript has no bearing on the appeal, the entire transcript is not required. However, nothing bars a party from obtaining and submitting all or any portion of the transcript.
- (2) Record with no evidentiary hearing.** In an appeal of a final technical review decision or other decision decided without an evidentiary hearing, the appeal is heard on the original papers and exhibits transmitted to the Board by the adjudicating officer. These

1 include all original documents filed by the parties and any
2 supplemental documents used by the adjudicating officer in rendering
3 a decision. That part of the original record in the possession of the
4 Department of Civil Service must be transmitted promptly to the
5 Board upon request.

6
7 **(3) Transcript not available.** When a stenographic record was made
8 but a transcript cannot be created, the parties may meet with the
9 adjudicating officer to settle the record.

10
11 **(4) Excerpts as exhibits.** Complete books, pamphlets, collective
12 bargaining agreements, and other large documents are not made
13 part of the record on appeal if excerpts are adequate.

14
15 **(5) Definition of Record**

16
17 **(a) When evidentiary hearing held.** The record before the Board
18 in any matter in which an evidentiary hearing was held, and to
19 which the briefs are addressed, includes the following:

20
21 **(1)** The grievance record, including grievances, complaints,
22 answers, investigative or disciplinary reports, and material
23 correspondence at the prior steps of the grievance
24 process.

25
26 **(2)** The pleadings, papers, briefs, and correspondence
27 submitted by the parties to the adjudicating officer.

28
29 **(3)** Filings, opinions, decisions, and orders of the adjudicating
30 officer.

31
32 **(4)** Certified transcripts of proceedings.

33
34 **(5)** Exhibits admitted into evidence by the adjudicating officer
35 or the Board.

36
37 **(6)** Any claim of appeal, application for leave to appeal, or
38 cross claim filed by a party with the Board.

39
40 **(7)** Briefs, supporting documents, and affidavits filed by a party
41 with the Board.
42

(b) **When no hearing held.** If no evidentiary hearing was held, the record before the Board after a grant of leave to appeal to which the briefs are addressed includes the following:

- (1) The pleadings, papers, briefs, and exhibits submitted by the parties to the adjudicating officer.
 - (2) Other documents relied upon by the adjudicating officer in rendering a decision.
 - (3) Filings, opinions, decisions, and orders of the adjudicating officer.
 - (4) Any claim of appeal, application for leave to appeal, or cross claim filed by a party with the Board.
 - (5) Briefs, supporting documents, and affidavits filed by a party with the Board.
- (6) **Stipulations.** The parties may stipulate in writing regarding any matter pertaining to the appeal, including the composition of the record. However, all stipulations must be consistent with civil service rules and regulations, including these appeal procedures, and are subject to review and acceptance by the Board.
- (7) **Recording by Party.** A party to a Board proceeding that is not required to be stenographically recorded may employ at its expense a certified stenographic, audio, or video reporter to record the proceeding if the Board determines that the recording will not be unduly disruptive. The party must request approval of the Board at least 14 calendar days before the proceeding.

M. Supplementing the Record and New Evidence

- (1) **Record Closed.** Except for pleadings filed and decisions issued on appeal to the Board, the record is closed at the time the final decision of the adjudicating officer is issued.
- (2) **Supplementing the Technical Record.** In an appeal of a final technical review decision or other decision decided without an evidentiary hearing, the Board may supplement the technical record on its own motion or on motion of a party, if the Board determines that the technical record is inadequate.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43

(3) **New Evidence after Evidentiary Hearing.** In an appeal of a decision decided after an evidentiary hearing, the Board shall not accept new evidence except upon its own motion or upon prior written request of a party for a legally sufficient reason. When the Board, upon its own motion or at the request of a party, allows new evidence:

- (a) It may hear the evidence itself.
- (b) It may assign the matter to the Chair, other Board member, or an adjudicating officer to hear the evidence and return a record.
- (c) It may order depositions or interrogatories.
- (d) It may remand the case to an adjudicating officer to hear the evidence and render a new or supplemental decision.

N. Dismissal of Appeals

(1) **Authority.** No application or appeal can be dismissed except by (1) the Board based upon motion, including its own, (2) the Board's administrative officer, as authorized in Rule 8-7.4, or (3) stipulation of the parties.

(2) **Motion to Dismiss.** A party may file with the Board a motion to dismiss for sufficient cause, including grievability, jurisdiction, timeliness, non-conformance to procedure, lack of prosecution, and frivolous appeal. A copy of the motion must be served on all other parties and a proof of service must be submitted to the Board with the motion. The other parties may file an answer to the motion within 28 calendar days after service of the motion. A copy of an answer must be served on all other parties and a proof of service submitted to the Board with the answer.

The Chair may suspend the necessity of further filings and place the motion before the Board or may grant or deny the motion subject to Board review upon completion of filings in the appeal.

(3) **Withdrawal.** A party who has filed an appeal may withdraw the appeal by filing a written request and obtaining approval of the Board's administrative officer. A copy must be served on all other

parties and proof of service submitted to the Board with the motion to withdraw.

O. Oral Argument

- (1) Chair.** The Chair of the Board shall preside at oral argument.
- (2) When Heard.** Oral argument must be heard on an appeal of right. Oral argument upon appeal following grant of an application for leave to appeal, or in any other case, may be scheduled at the discretion of the Board.
- (3) Procedure.** The parties are heard in public session in the order established on the Board agenda. The Board shall give notice of the oral argument to each party or party's authorized representative. Unavailability of a party who has an authorized representative is not cause for postponement of oral argument.
 - (a)** A request to postpone before the day of oral argument may be submitted to the Board's administrative officer upon written motion, stating good cause and setting out the position of all other parties relative to the request to postpone. A copy of the motion must be served on all other parties and proof of service submitted to the Board with the motion.
 - (b)** The Board's administrative officer may postpone or reschedule oral argument based on administrative considerations.
 - (c)** A request to postpone on the day of oral argument may be submitted orally to the Board setting forth good cause. The Board may postpone, adjourn, or reschedule oral argument based on administrative considerations upon request or its own motion.
- (4) Time Limitation.** Except as otherwise directed by the Board, each party may address the Board for a maximum of 15 minutes. In a group grievance, one person may address the Board for a maximum of 15 minutes on behalf of all members of the group. An appellant may offer rebuttal argument for a maximum of 5 minutes. The Board may extend the time for any party on request or at its own discretion.
- (5) Contemptuous Conduct.** Contemptuous conduct during the claim of appeal, application for leave to appeal, cross-claim, or at oral

argument is grounds for exclusion from the oral argument hearing and is grounds for other appropriate disqualification.

P. Recommendations

(1) **Grounds for Modification or Reversal.** The Board may recommend to the Civil Service Commission modifying or setting aside a decision or order of an adjudicating officer if substantial rights of the appellant have been prejudiced because the decision or order is any of the following:

- (a) In violation of, or an erroneous interpretation of law, including the civil service rules and regulations.
- (b) In excess of the authority or jurisdiction of the adjudicating officer.
- (c) Made upon unlawful procedure resulting in material prejudice to a party.
- (d) Arbitrary and capricious.
- (e) A clear abuse or unwarranted exercise of discretion.
- (f) Affected by other substantial and material error of law.
- (g) For that portion of the decision based on an adjudicatory hearing, not supported by the preponderance of competent, material, and substantial evidence on the whole record.

(2) **Interim Board Decisions.** Board decisions and orders, including remand orders when the Board retains jurisdiction, which are procedural or not a final recommendation to the Civil Service Commission are effective when issued by the Board, unless the decision or order provides otherwise. A Board decision or order issued before a final recommendation does not require prior Civil Service Commission review and approval, but is reviewed by the Commission when it reviews the final Board recommendation.

(3) **Final Recommendation.** When the Board concludes its review, the Board must issue a final recommendation to the Civil Service Commission. The Board must recommend that the Commission affirm, reverse, or modify, in whole or in part, the decision or order of

the adjudicating officer. After the Board issues a final recommendation, the Civil Service Commission automatically reviews the recommendation and issues a final Commission decision without further required action by any party.

- (3) **Quasi-Judicial Conference.** Decisions of the Board are made in a quasi-judicial conference from which all persons except the Board and its staff are excluded. The Board may meet and confer in person, by telephone or other electronic means, or by correspondence.
- (4) **Majority.** Decisions of the Board must be made by majority vote of a quorum of the Board.
- (5) **Division.** When only two members of the Board participate and they are divided as to the ultimate decision, each member shall make a separate written recommendation to the Commission.
- (6) **Dissent.** Decisions of the Board are unanimous unless a dissent is indicated.
- (7) **Confidentiality.** Except for the record and decisions of the Board, all files of the Board and its members relating to appeals, including, but not limited to, staff analyses, draft decisions, correspondence between Board and staff, and Board discussions are confidential and not open to the public.
- (8) **Notice.** All decisions and orders of the Board must be forwarded to the parties by the Board by United States or interdepartmental mail to the last known address of the parties and their representatives or as otherwise deemed appropriate.
- (9) **Further appeal to the courts.** The final decision of the Civil Service Commission is subject to review in the Michigan circuit court. A petition for review must be filed within 60 calendar days after the date the final Commission decision is issued. A petition for review must name the Michigan Civil Service Commission as a respondent and must be served on the Michigan Civil Service Commission at its main office, 400 South Pine Street, Lansing, Michigan 48933. (See Michigan Court Rule 7.104(d) and Michigan Compiled Laws §§ 24.301-24.306.)

1 **(10) Awards.** All awards of back pay and other benefits, even when not
2 expressly stated, are subject to civil service rules and regulations,
3 and, where appropriate, are subject to the following:

4
5 **(a)** Deduction of earnings in other employment or self-employment.

6
7 **(b)** Deduction of benefits received from employer contributory
8 income protection insurance.

9
10 **(c)** Deduction of benefits received under the following government
11 assistance programs:

12 **(1)** Workers' Compensation

13 **(2)** Unemployment Compensation

14 **(3)** Social Security

15 **(4)** Social Welfare

16
17
18
19
20
21
22 **Q. Post-Decision Procedures**

23
24 **(1) Enforcement.** The enforcement of decisions or orders of the Board,
25 after approval of the Commission, is administered by application of a
26 party to circuit court or court of claims.

27
28 **(2) Reconsideration.** A party may request that the Board reconsider a
29 recommendation to the Civil Service Commission. An original and 6
30 copies of a request for reconsideration must be filed with the Board
31 within 14 calendar days after the date of mailing of the Board
32 recommendation and must be accompanied by a brief in support of
33 the request. A copy of the request must be served on all other
34 parties and a proof of service must be submitted to the Board with
35 the request.

36
37 The other parties may submit a response within 14 calendar days
38 after the filing of the request for reconsideration. A copy of the
39 response must be served on all other parties and a proof of service
40 submitted to the Board with the response.
41

DRAFT	Reg 8.05: Employment Relations Board: Appeal Procedures DRAFT (Rev A)	Page 29 of 40
-------	--	---------------

5. Contact

Questions regarding this Regulation should be directed to the Employment Relations Board, Department of Civil Service, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909, phone (517) 335-5588, facsimile (517) 335-2884.

Current Reg. 2.05: ERB Appeal Procedures

Regulation 2.05

Employment Relations Board

Appeal Procedures

PART 1: METHOD OF REVIEW

101 Authorization. Review authorized by the Civil Service Commission Rules or otherwise specifically authorized by the Commission shall be conducted under these procedures.

102 Definitions.

- (1) **Adjudicating Officer** means any Civil Service hearing or examining officer authorized to make decisions reviewable by the Board, the "State Personnel Director" and any "arbitrator" appointed under Part 3 of the Civil Service Grievance Procedure.
- (2) **Appropriate Employer** means the State Employer, who is the Governor's designated representative, and the employer who is the Appointing Authority.
- (3) **Board** means the Employment Relations Board created in Chapter 6, Section 6-3.4 of the Civil Service Rules.

PART 2: JURISDICTION

201 Authority. Under the Rules and procedures of the Commission, and these procedures, the Board shall review any matter and issue any decisions and orders it deems necessary and expedient to determine appeals.

202 Appellate Jurisdiction. The Board exercises appellate jurisdiction as to:

- (1) **Dismissal Appeals.** Appeals as of right by employees from hearing officers' affirmances of dismissals for cause.
- (2) **Civil Service Grievance Procedure.** Applications for leave to appeal by employees or by appropriate employers from decisions of hearing officers, State Personnel Director and arbitrators in all cases of grievances against appropriate employers pursuant to the Civil Service Grievance procedure.
- (3) **Civil Service Technical Appeal Procedure.** Application for leave to appeal by employees, appropriate employers and the State Personnel Director from decisions of technical hearing officers, or by employees, employee organizations, and appropriate employers from administrative decisions of the State Personnel Director.

~~(4) **Labor Relations Appeal Procedures.** Applications for leave to appeal by employees, employee organizations, and appropriate employers from unfair labor practice, voting unit and election objection decisions of hearing examiners.~~

~~(5) **Recognition and Unit Determinations by the State Personnel Director.** Applications for leave to appeal by employees, employee organizations and appropriate employers from recognition and unit determinations and other labor relations decisions of the State Personnel Director.~~

~~**203 Evidentiary Record.** Upon grant of leave to appeal from decisions of the State Personnel Director, the Board may provide for the making of a concise record, if none exists.~~

~~PART 3: APPEALS OF RIGHT~~

~~**301 Grounds.** An employee dismissed for cause may appeal as of right to the Board from a final Civil Service Department adjudication upholding the dismissal. Dismissal for cause is a permanent termination of the employment relationship by the appropriate employer, but other than a probationary permanent termination, layoff or a termination by certification at the order of the State Personnel Director.~~

~~**302 Procedure.** The following steps shall be followed:~~

- ~~(1) A claim of appeal, including a statement of grounds for appeal, shall be filed with the Board within 20 weekdays of mailing of the adjudicating officer's decision. Copies shall be served on the other parties and proof of service submitted to the Board with the claim of appeal.~~
- ~~(2) Within 20 weekdays of receipt of the transcript or settlement of the record or such other time as the Board may direct, the appellant shall submit a brief in support of the claim of appeal. Copies shall be served on the other parties and proof of service submitted to the Board with the brief.~~
- ~~(3) Within 20 weekdays from the date of service of appellant's brief, the appropriate employer shall file a response thereto. Copies shall be served on other parties and proof of service submitted to the Board with the response.~~

~~PART 4: LEAVE TO APPEAL~~

~~**401 Grounds and Meritorious Basis for Appeal.** Appeal to the Board from an adjudicating officer's final decision may be initiated by an employee, employee organization, appropriate employer, State Personnel Director, exclusive representative and applicant for employment upon application and leave granted, in the discretion of the Board, upon a showing of grounds for appeal under Civil Service Rule 2-20.3 and of a meritorious basis for appeal.~~

- ~~(1) **Meritorious Basis.** A meritorious basis for appeal exists when the question appealed is of major significance to employment relations in the classified State Civil Service or the decision of the adjudicating officer on the question is clearly erroneous.~~
- ~~(2) **Arbitration.** In arbitration cases the appellant must show that the dispute has not been promptly submitted to arbitration and resolved, or that the arbitration procedures have~~

~~been unfair or irregular, or that the arbitration result is repugnant to Commission Rules or statutes.~~

~~**402 Procedure on Application.** The application showing grounds for appeal and a meritorious basis for appeal shall be accompanied by a concise statement of the material proceedings and findings, and it may be accompanied by a brief and affidavits. In arbitration cases appellant shall submit a copy of the arbitration decision and order. Application for leave to appeal shall be filed with the Board within 20 weekdays of the mailing of the adjudicating officer's decision. Appellant shall serve copies upon the other parties and submit proof of service thereof to the Board with the application. Any other party may file a brief and affidavits within 20 weekdays of service of appellant's brief. It shall serve copies on the other parties and submit proof of service thereof to the Board with its brief and affidavits. If a procedure of the Board or Commission provides for a lesser appeal period, other parties shall respond within an equal period after service.~~

~~**403 Procedure After Grant of Leave to Appeal.** The following procedure shall be observed.~~

- ~~(1) **Normal.** Within 20 weekdays of receipt of the transcript or settlement of the record, the appellant shall submit a brief. Copies shall be served on the other parties and proof of service submitted to the Board with the brief. The other party shall have 20 weekdays thereafter to file a response. Copies of the response shall be served on the other parties and proof of service submitted to the Board with the response.~~
- ~~(2) **Summary.** Without requiring further briefs, the Board may summarily decide an appeal or may remand the case to the adjudicating officer with directions for its disposition. Unless the adjudicating officer is directed to report back to the Board, the case is remanded without prejudice to the filing of a new application for leave to appeal by any party from any further findings, conclusions and decision.~~

PART 5: FILING OF APPEALS

~~**501 General Procedure.** Every appeal to the Board shall be initiated by filing a claim of appeal of right or an application for leave to appeal. All appeals shall be addressed to the Employment Relations Board, Department of Civil Service, Capitol Commons Center, 400 South Pine Street, P.O. Box 30002, Lansing, Michigan 48909. An appeal is filed when it is received by the Board.~~

~~**502 Computation of Time.** When an appeal period or time for filing begins with the mailing or receipt of a document or the performance of an act, the day of mailing, receipt, or action is excluded from the computation. The computation begins with the next following weekday. "Weekday" is defined as Monday through Friday, excluding state employment holidays.~~

~~**503 Failure to Comply.** For failure properly and timely to perform any act required on appeal by any rule or regulation, the appeal may be dismissed by the Board.~~

~~**504 Signing Appeal Papers.** All appeal papers filed with the Board shall be signed by the party or by a person authorized to represent the party and shall certify that copies have been served on other parties, stating the names of the parties served and the manner of service.~~

~~**505 Service of Documents.**~~

- ~~(1) **Normal.** Service upon a party of any document, authorized or required by the Board by these procedures or by Civil Service Rules, may be made by leaving a copy at the~~

~~principal office or the residence of the person served, or by first class mail. The date of service shall be the date of personal delivery or the 3rd weekday following the date of deposit in the United States mail.~~

- ~~(2) **Emergency Appeals.** In case of an emergency appeal or motion seeking immediate decision of the Board or Chairperson, or an appeal or response period of less than 20 weekdays, or upon order of the Board, service upon a party shall be made personally no later than the day of filing with the Board or by overnight mail timely posted no later than the day of filing.~~

~~**506 Proof of Service.** Prima facie proof of service, if required by these procedures or by the Board, may be made by certified or registered mail receipt or by a signed statement setting forth how service was accomplished.~~

~~PART 6: EXTENSIONS OF TIME~~

~~**601 Incomplete Filing.** If appellant in good faith files a timely application which does not comply with these appeal procedures, the Board shall notify appellant of the requirements and allow additional time not to exceed 20 weekdays thereafter for completion of filing. This sub-section shall not apply to appeals from decisions on terminations from employment or from labor relations decisions of hearing examiners, arbitrators or the State Personnel Director.~~

~~**602 Extension for Transcript.** Upon filing a timely application or response in compliance with Commission rules and these procedures, along with a copy of the transcript purchase order submitted to the reporter and a statement that payment therefore has been made or secured, but the transcript is not yet available, the Board or Chairperson may grant the request of a party for an extension of time not to exceed 20 weekdays beyond the party's due date for filing a brief in support of the application or response. Any other party may object by filing a showing of prejudice, but shall not delay its own timely application or response. If the request is granted, the party obtaining the transcript shall serve a copy on the Board with its brief. Any opposing party may file a response brief within 20 weekdays after service upon it of the appellant's brief.~~

~~**603 Extension for Filing.** Upon good cause shown in writing and filed with the Board before the expiration of the required time for filing, and copies thereof having been served on other parties, the Board or Chairperson may grant an extension of time in which to file any papers in support of or in response to an appeal. The parties may stipulate to an extension for filing.~~

~~PART 7: EFFECT OF FILING~~

~~701 After Final Orders.~~

- ~~(1) **Exclusive Jurisdiction.** Once an appeal or application for leave to appeal from a final order of an adjudicating officer is perfected, the Board shall exercise exclusive jurisdiction over the matter.~~
- ~~(2) **Automatic Stay.** The final order of an adjudicating officer shall become effective immediately upon its issuance unless it indicates to the contrary. Compliance therewith shall be completed to the extent reasonably possible by the fifth weekday following the mailing date of the order. Provided, however, in the event of a timely appeal, except in the circumstances stated in sub-sections (3) and (4) below, the order shall be stayed~~

~~automatically pending Board and Commission review unless the Board in its discretion shall order otherwise.~~

- ~~(3) **Stay of Representation Determination.** Provided further, that no appeal of any representation determination shall result in a stay of the determination unless the Board so directs on the basis of a motion setting out good cause for the granting of the stay having been filed and copies thereof having been served on the other parties.~~
- ~~(4) **Stay of Reinstatement Order.** Provided further, an order for reinstatement of a terminated employee, but not including a back pay award, shall be stayed only at the discretion of the Board upon emergency motion of the appropriate employer in writing to the Board within five (5) weekdays of the mailing date of the order appealed. Grievant shall have five (5) weekdays after service to respond. The appropriate employer shall show in its motion to the Board that the temporary reinstatement of grievant pending the Board's final review of the appeal will cause irreparable harm. Upon timely motion, the effective date of a reinstatement order shall be held in abeyance pending decision of the Board or its Chairperson on the request of stay.~~

~~702 Before Final Orders.~~

- ~~(1) **Interlocutory Appeal.** An interlocutory appeal of a ruling by an adjudicating officer before the adjudicating officer issues a final decision may be made only upon special permission of the Board. The request for special permission shall establish one of the following conditions in addition to the grounds for the request:~~
- ~~(a) **Hearing Officer Certification.** The adjudicating officer has certified that the decision involves a controlling question of law, Commission Rule, or procedure as to which there is substantial ground for difference of opinion, and that an immediate appeal will materially advance the ultimate resolution of the case; or~~
- ~~(b) **Substantial Harm.** The appellant will suffer substantial harm by awaiting final decision in the case before appealing the question of law, Commission Rule, or procedure.~~
- ~~(2) **Stay.** The proceedings before the adjudicating officer shall not be stayed upon the filing of the interlocutory appeal unless the adjudicating officer so orders.~~

~~PART 8: DELAYED APPEAL~~

~~**801 Grounds.** After the expiration of the period for timely appeal, the Board may grant leave to appeal from any decision from which timely appeal would have been available as of right or by leave, upon appellant's showing of a proper ground and a meritorious basis for appeal, and that there is good cause for delayed filing of the appeal. Appellant shall submit with the appeal evidence in affidavit form establishing that the delay was not due to appellant's culpable negligence. Copies of the delayed appeal and supporting affidavits shall be served on the other parties and proof of service submitted to the Board with the delayed appeal. The other parties may file responses to the delayed appeal within 20 weekdays after service. Copies shall be served upon each other party, including appellant, and proof of service thereof submitted to the Board with the response.~~

~~802—Factors the Board Shall Consider.~~ The Board shall weigh the cause and extent of delay, the degree of negligence, the culpability of appellant, the effect on appellee(s) if delayed appeal is granted and the effect on appellant if denied. The Board may reserve judgment on whether good cause for delay exists and conditionally grant leave to appeal.

~~PART 9: SPECIAL PROCEDURES~~

~~901—Cross Appeals.~~ Where appeals are filed by both adverse parties, each shall also reply to the appeal of the other party. Leave to appeal granted appellant shall give appellee the right to file a cross appeal within the time for filing appellant's brief. A cross appeal may be prosecuted even if the adverse party's appeal is abandoned or dismissed.

~~902—Other Special Procedures.~~

- ~~(1)—Expedited Procedure.~~ The Board may shorten the time for filing a response, dispense with briefs or require simultaneous briefs, call for immediate appearance for oral argument, or otherwise expedite any proceedings. If a matter is expedited, the Board will set a time for response and notify the parties.
 - ~~(2)—Emergency Appeal.~~ Upon the showing of due diligence and that irreparable harm will result if the normal practice on appeal or leave to appeal is followed, and upon reasonable notice to all parties and opportunity for their response, the Board may grant a party's request for emergency relief or for appearance before the Board at its next following meeting.
 - ~~(3)—Motions.~~ All motions other than those justifiably made at oral argument, shall be made in writing to the Board, shall briefly state the relief sought, and shall be accompanied by affidavits setting forth the grounds for the action requested. The moving party shall serve copies on all other parties and submit proof of such service to the Board. All motions shall be decided upon the papers filed with the Board unless the Board in its discretion calls for oral argument or otherwise indicates to the contrary.
 - ~~(4)—Joinder.~~ Upon motion of a party, or upon the Board's own motion, parties may be added, dropped or substituted at any stage of the proceedings, upon such terms as the Board may deem appropriate.
 - ~~(5)—Consolidation.~~ Upon motion of a party, or upon the Board's own motion, any number of proceedings before the Board may be consolidated by it when there are similar or interrelated facts and circumstances or when common issues of law exist, provided no substantial right of any party will be prejudiced by such consolidation.
 - ~~(6)—Intervention.~~ Upon application which establishes good cause, the Board may grant a person, organization, appropriate employer, or the Department of Civil Service leave with or without restriction, to intervene or appear amicus curiae in proceedings before the Board.
- ~~—Any application shall be in writing and shall set forth the facts upon which the claim for intervention is based. Copies shall be served upon all parties and proof of services submitted to the Board with the application.~~

~~PART 10: RELIEF~~

~~**1001 Nature.** In any matter before it, the Board may grant any relief within its authority under the rules of the Commission and these procedures, as may be required to attain justice and equity. This includes, but is not limited to, affirming, reversing, or modifying any decision or order of an adjudicating officer or remanding the matter with directions, including the holding of a new hearing.~~

~~PART 11: RECORD~~

~~**1101 Settlement of Record.** On appeal of right or after grant of leave to appeal, the appeal shall be heard on the original papers and exhibits certified by the adjudicating officer, and the transcript if there was a recorded hearing. That part of the record in the possession of the Department of Civil Service shall be transmitted promptly to the Board upon request. Provided, however, the Board shall obtain the transcript only after ascertaining that a stipulation of facts in lieu of transcript is not possible, and the issues require the evidentiary transcript. Where a substantial part of the transcript has no bearing on the appeal, the entire transcript shall not be required. However, nothing shall bar a party from obtaining and submitting the entire transcript or any portion thereof.~~

~~**1102 Filing Arbitration Record.** Within 30 weekdays of leave granted to appeal an arbitrator's decision, the appellant shall file with the Board the original record properly certified by the arbitrator and reporter or such record as may be stipulated by the parties.~~

~~**1103 Transcript Not Available.** Where a stenographic record was made but a transcript is unavailable, the parties shall meet with the adjudicating officer to settle the record.~~

~~**1104 Excerpts as Exhibits.** Complete books, pamphlets, and other documents shall not be made part of the record on appeal if excerpts are adequate.~~

~~**1105 Definition of Record.** The record before the Board upon appeal of right or after grant of application for leave to appeal, and to which the briefs shall be addressed, shall include the following documents:~~

- ~~(1) Grievance procedure complaints, answers, and material correspondence at prior steps of the grievance procedure.~~
- ~~(2) Filings, opinions, decisions and orders of adjudicating officers.~~
- ~~(3) Certified transcript of proceedings and exhibits, or stipulation or Board ruling in lieu thereof.~~
- ~~(4) Claim of appeal, or application for leave and order allowing appeal.~~
- ~~(5) Briefs and supporting documents.~~

~~**1106 Stipulations.** The parties may stipulate in writing regarding any matter pertaining to the appeal, including the composition of the record. Provided however, all stipulations must be consistent with the Rules and procedures of the Commission and with these appeal procedures, and are subject to the approval of the Board.~~

~~**1107 Stenographic Recording by Party.** Either party to a Board or an adjudicating officer proceeding that is not required to be stenographically recorded by the terms of any applicable~~

~~hearing procedure may employ at its expense a certified stenographic reporter to record the proceeding.~~

PART 12: DISMISSAL OF APPEALS

~~**1201 Authority.** No appeal or application for leave to appeal shall be dismissed except by the Board based upon motion, including its own, or by stipulation of the parties.~~

~~**1202 Motions to Dismiss.** Motions to dismiss for good cause, including grievability, jurisdiction, timeliness, non-conformance to procedure, lack of prosecution, and frivolous appeal, may be filed with the Board. Copies shall be served on the other parties and proof of service submitted to the Board with the motion. The other parties shall have 20 weekdays after service to answer the motion.~~

~~The Chairperson may suspend the necessity of further filings and place the motion before the Board or may grant or deny the motion subject to Board review upon completion of filings in the appeal.~~

~~**1203 Withdrawal.** A party who has filed an appeal may withdraw the appeal by filing a written request and obtaining approval of the Board.~~

PART 13: ORAL ARGUMENT

~~**1301 Chairperson.** The Chairperson shall preside over a quorum of a Board at oral argument.~~

~~**1302 When Heard.** Oral argument is heard on an appeal of right. Oral argument upon an application for leave to appeal, upon appeal following grant of an application for leave to appeal, or in any other cases shall be at the discretion of the Board.~~

~~**1303 Procedure.** The parties shall be heard in public session in the order established on the Board agenda at such time and place as may be designated. Notices of oral argument shall be sent by first class mail to the address of record of each party and to the party's representative. Unavailability of a grievant or supervisor who is represented by a spokesperson shall not be cause for postponement of oral argument. No case shall be postponed except by the Board or Chairperson upon written motion stating good cause and setting out the position of each of the other parties relative to the request to postpone. Copies of the motion shall be served on the other parties and proof of service submitted to the Board with the motion.~~

~~The Board or Chairperson may postpone, adjourn or reschedule oral argument based on administrative considerations.~~

~~**1304 Time Limitation.** Except as otherwise directed by the Board, one spokesperson shall be heard for each party for a maximum period of 15 minutes. Oral argument shall be stenographically recorded only when directed by the Board.~~

~~**1305 Contemptuous Conduct.** Contemptuous conduct at oral argument shall be grounds for exclusion from the hearing and shall be grounds for such other disqualification as is appropriate.~~

PART 14: NEW EVIDENCE

~~1401 Good Cause.~~ New evidence will not be accepted by the Board except upon its own motion or upon prior written request showing good cause and prior notice to all other parties.

~~1402 Procedure.~~ When the Board on its own motion or at the request of a party allows new evidence:

- ~~(1) It may hear the evidence itself.~~
- ~~(2) It may assign the matter to the Chairperson, other Board member, or an adjudicating officer to hear the evidence and return the record.~~
- ~~(3) It may order depositions or interrogatories.~~
- ~~(4) It may remand the case to an adjudicating officer to hear the evidence and render a new decision.~~

PART 15: DECISIONS

~~1501 Grounds for Modification or Reversal.~~ The Board may modify or set aside a decision and/or order of an adjudicating officer if substantial rights of the appellant have been prejudiced because the decision or order is any of the following:

- ~~(1) In violation of, or an erroneous interpretation of, constitution, law, rule or regulation.~~
- ~~(2) In excess of authority or jurisdiction of the adjudicating officer.~~
- ~~(3) Made upon unlawful procedure resulting in material prejudice to a party appellant.~~
- ~~(4) Unsupported by the preponderance of competent, material, and substantial evidence on the whole record after consideration is given to the evaluation by the adjudicating officer of credibility, and to evidentiary findings especially within the competence of the adjudicating officer.~~
- ~~(5) Arbitrary or capricious.~~
- ~~(6) Affected by other substantial and material error of law.~~
- ~~(7) An improper exercise of discretion by the adjudicating officer.~~

~~1502 Quasi-Judicial Conference.~~ Decisions of the Board on appeals shall be made in quasi-judicial conference from which all persons except Board members and its staff shall be excluded, or shall be made by written approval or telephone conference.

~~1503 Majority.~~ Decisions of the Board shall be made by majority vote of a quorum of the Board.

~~1504 Division.~~ When the Board members are equally divided as to the ultimate decision, the judgment of the adjudicating officer shall be affirmed or leave to appeal denied.

~~1505 Dissent.~~ Decisions of the Board are unanimous unless a dissent is indicated.

~~1506 Confidentiality.~~ All files of the Board and its members relating to impartial analyses, discussions in quasi-judicial conference, and working drafts of decisions shall not be public.

~~1507 Notice.~~ All decisions and orders of the Board shall be forwarded to the parties by the Board by United States mail or as otherwise deemed appropriate.

~~1508 Finality.~~ Decisions and orders of the Board shall be filed with the Commission. The Board shall notify the parties of the action of the Commission.

~~Orders which are procedural and not a final disposition of the case shall be effective when issued by the Board. All other orders and decisions shall become effective upon Commission approval.~~

~~1509 Awards.~~ All awards of back pay and other benefits, even when not expressly stated, shall be subject to the Rules and procedures of the Commission, and, where appropriate, shall be subject to:

- ~~(1) Deduction of earnings in other employment or self-employment.~~
- ~~(2) Deduction of benefits received from employer contributory income protection insurance.~~
- ~~(3) Deduction of benefits received under the following government assistance programs:~~
 - ~~(a) Workers' Compensation~~
 - ~~(b) Unemployment Compensation~~
 - ~~(c) Social Security~~
 - ~~(d) Social Welfare~~

PART 16: POST-DECISION PROCEDURES

~~1601 Execution.~~ The execution of decisions or orders of the Board, after approval of the Commission, shall be administered by application of a party to circuit court or court of claims.

~~1602 Reconsideration.~~ A request for reconsideration of a Board decision, issued as final or pending review by the Commission, is not required in order to exhaust administrative remedies. If a request is made, it shall be filed with the Board within 10 weekdays after the date of mailing of the Board decision and shall be accompanied by a brief in support of the request. Copies of the request shall be served on the other parties and proof of service submitted to the Board with the request. Reconsideration shall be granted at the discretion of the Board. If in the interim the Commission has approved the original Board decision, a denial of reconsideration by the Board represents the final decision of the Board and the Commission. A Board decision following the granting of a request for reconsideration shall become final upon Commission review.